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No. SUPREME COURT, U.S.

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IN THE

# SUPREME COURT OF THE UNITED STATES.

1963

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for Themselves Jointly and Severally, and for All Others Similarly Situated, Plaintiffs-Appellees,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, Intervenors-Appellees,

DAVID J. YANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., Intervenors-Appellants,

JOHN W. McCONNELL, JR., JOSEPH M. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Intervenors-Appellants,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama; and B. A. REYNOLDS, Judge of Probate of Dallas County, Alabama, and FRANK PEARCE, Judge of Probate of Marion County, Alabama, Defendants.

Appeal From the United States District Court for the Middle District of Alabama, Northern Division.

Civil Action, No. 1744-N.

## MOTION TO DISMISS OR AFFIRM.

CHARLES MORGAN, JR.,
1512 Comer Building,
Birmingham, Alabama,
GEORGE PEACH TAYLOR,
927 Brown-Marx Building,
Birmingham 2, Alabama,
JEROME A. COOPER,
1025 Bank for Savings Building,
Birmingham, Alabama.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

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Appeal From the United States District Court for the Middle District of Alabama, Northern Division.

Civil Action. No. 1744-N.

## MOTION TO DISMISS OR AFFIRM.

Plaintiffs-Appellees, M. O. Sims et al., and Intervenors-Appellees, R. E. Farr et al. (all hereinafter called "plaintiffs") pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the Final Judgment and Decree of the District Court be affirmed or that the several appeals be dismissed on the ground that the questions presented are so unsubstantial as not to warrant further argument.

## ARGUMENT.

The Plaintiffs, as citizens of the United States and of the State of Alabama, and as taxpayers and duly qualified and registered voters in said State, sued in their own behalf and in behalf of all other voters of the State of Alabama who are similarly situated. The complaint sought a determination of plaintiffs' rights with respect to the apportionment of State representatives and senators among the counties of the State of Alabama.

Plaintiffs alleged that debasement of their votes in Alabama constituted a denial of the constitutionally guaranteed equal protection of the law. The Legislature of the State of Alabama had failed and continued to fail to reapportion itself since establishment of the Alabama Constitution of 1901, thereby violating both the Fourteenth Amendment and § 198, § 199 and § 200 of the Alabama Constitution of 1901.[1]

The Three Judge District Court, Rives, Circuit Judge; Thomas and Johnson, District Judges, on April 14, 1962, denied an application by the plaintiffs for interlocutory relief. The Court at that time expressed the view that sufficient time remained for the Legislature of Alabama to comply with its duty prescribed by the Constitution of 1901 of the State of Alabama.

On July 12, 1962, an extraordinary session of the Alabama Legislature passed a proposed Constitutional Amendment, commonly referred to as a "67 Senator Amendment,"[2] subject to the ratification of the voters of the State of Alabama in an election to be held in November, 1962. On the same day, the Governor of the State of

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[1] Appendix "A" of the Opinion of the District Court, 208 F. Supp. 431 (1962).

[2] Senate Bill 29. See Appendix "B" of the Opinion of the District Court, *Id.*, 1.

Alabama signed into law the "Crawford-Webb Bill."[3] This Bill has been characterized as a "standby" legislative act, to take effect in the event the voters of the State of Alabama did not ratify the proposed "67 Senator Amendment," or the District Court did not approve the "67 Senator Amendment."

Upon considering the action taken by the Legislature of Alabama during the grace period, the District Court in its final decree determined: "That neither the '67 Senator Amendment' nor the 'Crawford-Webb Act' meets the necessary constitutional requirements." **Sims v. Frink**, 208 F. Supp. 431, 437 (1962). Therefore, the District Court found it necessary to indicate some immediately workable plan for the reapportionment of the Legislative seats of the Legislature of Alabama.

Under the requirements of § 198, § 199 and § 200 of the Constitution of Alabama[4] neither the membership of the House nor the Senate can be based strictly and entirely upon population. § 284 of that Constitution states that "representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments." But there exist conflicting requirements in § 197 and § 200. As a result "representation according to population **to some extent** must be required in **both** Houses if invidious discrimination in the Legislative systems as a whole is to be avoided". (emphasis added). 208 F. Supp. 431, 439 (1962).

The District Court, accordingly, undertook to determine how far the overriding requirement of the Federal Constitution can be met, without total disregard of the more detailed requirements of the Alabama Constitution. The judgment below, represents an earnest effort "to meet all such requirements . . ."

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[3] Officially known as House Bill 59, see Appendix "C" of the Opinion of the District Court. *Id.*, 1.

[4] See Appendix "A" of the Opinion of the District Court. *Id.* 1.

That judgment adopted the provisions of the proposed "67-Senator Amendment" relating to the House of Representatives.[5] While the proposed reapportionment of the Senate in the "Crawford-Webb Act" was "unacceptable as a piece of **permanent** legislation" (emphasis added), the alternatives were altogether unacceptable. Strict reapportionment of the Senate would result in placing nine counties having over half the population of the State in complete control of the Senate. As the Court observed, "if the provisions of the State Constitution do not permit a single county to be divided into more than one senatorial district, such restriction would have to be held in conflict with the overriding requirement of equal protection of the laws provided by the Federal Constitution. We are not yet convinced of such a conflict beyond a reasonable doubt." After the Court's adoption of the above plan for the reapportionment of both Houses of the Legislature, several parties have indicated their dissatisfaction with the decree of the District Court by filing appeals with this Honorable Court. The Intervenor-Appellees respectfully request that the Court consider this motion as addressed to all such appeals.

The District Court emphasized that its purpose was not to reapportion permanently the Legislature of the State of Alabama, but rather to release the "strangle hold on the Legislature". With wise restraint, the Court felt that it should "so far as is possible, accept such parts of the Acts of the Legislature as have any merit in framing the order of the Court."

The Legislature of the State of Alabama has made a step in the right direction, the first such step in sixty-odd years. The District Court recognized that the newly apportioned Legislature will be free to improve upon the changes resulting from the order of the Court. Thus, the path has been cleared, the strangle hold released.

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[5] See Appendix "B" of the Opinion of the District Court.

On the remandment of **Baker v. Carr**, 82 S. Ct. 691 (1962), the District Court observed that

> [7-9] [i]n considering the remedy which should be applied to correct the inequalities and inequities which we find to exist in the 1962 reapportionment of legislative strength in Tennessee, we begin with the view that there should be a minimum of judicial intrusion by federal courts into the governmental affairs of the state consistent with an effective enforcement of the plaintiffs' rights to equal protection of the law under the Fourteenth Amendment to the Federal Constitution as envisaged by the landmark opinion of the Supreme Court in the present case. Federal courts should be ever conscious of the necessity of preserving the integrity and independence of state governments, and should exercise an appropriate degree of restraint to permit them the widest possible latitude in conducting their internal affairs and in solving their own governmental problems. 206 F. Supp. 341 (1962).

Wherefore, Petitioners respectfully move that the several appeals be dismissed or that the judgment and decree of the District Court be affirmed.

Respectfully submitted,

CHARLES MORGAN, JR.

.....

GEORGE PEACH TAYLOR,

.....

JEROME A. COOPER,

.....

**Certificate of Service.**

I, Jerome A. Cooper, one of the attorneys for Intervenors-Appellees, R. E. Farr et al., as a member of the Bar of

the Supreme Court of the United States, hereby certify that on the ..... day of November 1962, I served copies of the foregoing statements opposing jurisdiction and motion to dismiss or affirm on the several Appellants thereto by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record as follows:

Thomas G. Gayle,
1104½ Water Avenue,
Selma, Alabama,

Joseph E. Wilkinson, Jr.,
310 Broad Street,
Selma, Alabama,

McLean Pitts,
15 Broad Street,
Selma, Alabama,

Rankin Fite,
Hamilton, Alabama,

John W. McConnell, Jr.,
1101 Merchants National Bank Building,
Mobile, Alabama,

David J. Vann,
2100 Comer Building,
Birmingham, Alabama,

Robert S. Vance,
1703 Comer Building,
Birmingham, Alabama,

C. H. Erskine Smith,
First National Building,
Birmingham, Alabama.